In the Supreme Court of the United States

OCTOBER TERM, 1950

No. 316

SWIFT AND COMPANY, PETITIONER

v.

RECONSTRUCTION FINANCE CORPORATION

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION

OPINIONS BELOW

The opinions of the United States District Court for the Northern District of Illinois, Eastern Division (R. 60–73; 719–728), are reported at 79 F. Supp. 546 and 81 F. Supp. 629. The opinion of the Court of Appeals for the Seventh Circuit (R. 752–759) is reported at 183 F. 2d 456.

JURISDICTION

The judgment of the court of appeals was entered on June 21, 1950 (R. 760). The petition

for a writ of certiorari was filed on September 19, 1950. The jurisdiction of this Court is invoked under 28 U. S. C. 1254 (1).

QUESTIONS PRESENTED

1. Whether an "announcement" by the Reconstruction Finance Corporation, terminating the payment of subsidies under the Emergency Price Control Act, is a "regulation" or "order" reviewable only by the Emergency Court of Appeals.

2. Whether a subsidy payable to meat packers, measured by the slaughter of livestock, is a sum "relating to the production or sale of agricultural commodities", giving the district court jurisdiction over the termination of such subsidy by reason of Section 2 (m) of the Emergency Price Control Act.

STATUTES AND REGULATIONS INVOLVED

The pertinent provisions of the Emergency Price Control Act of 1942, as amended, and of the controlling regulations and directives are set forth in the Appendix, *infra,* pp. 21–26.

STATEMENT

This suit was instituted by a complaint filed by petitioner on June 30, 1947, in the United States District Court for the Northern District

of Illinois, claiming meat subsidy payments which respondent was allegedly withholding (R. 2–5).

The origin of this suit, while not fully revealed in the transcript, is readily apparent from the official records of the emergency subsidy program.[1] The basic authority for institution of subsidy payment programs is found in Section 2 (e) of the Emergency Price Control Act of 1942 (50 U. S. C. App. 902 (e)), *infra,* pp. 21–22. Such subsidy payments were found necessary with respect to meat products in June 1943. At that time, in order to implement the President's hold-the-line policy (E. O. 9328, 8 F. R. 4681), the Office of Price Administration reduced the maximum permissible selling prices on meat products approximately 10 per cent.[2] This reduction was compensated for by a subsidy, payable to meat packers on the basis of livestock slaughtered, which was put into effect as of June 7, 1943,

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[1] For a complete account of the origin, purposes and mechanics of the meat subsidy program, see *Armour & Co.* v. *Bowles*, 148 F. 2d 529, 532–534 (E. C. A.), certiorari denied, 325 U. S. 871; *Earl C. Gibbs, Inc.* v. *Defense Supplies Corp.*, 155 F. 2d 525, 526–529 (E. C. A.), certiorari denied, 329 U. S. 737; Hyman and Nathanson, *Judicial Review of Price Control: The Battle of the Meat Regulations*, 42 Ill. Law Review 584.

[2] Amendment No. 15, Revised Maximum Price Regulation 169, 8 F. R. 7675; Amendment No. 5, Revised Maximum Price Regulation 148, 8 F. R. 7671; Amendment No. 4, Revised Maximum Price Regulation 239, 8 F. R. 7679.

by Regulation No. 3 of the Defense Supplies Corporation (8 F. R. 10826–10829; R. 8).[3]

Upon the dissolution of the Defense Supplies Corporation on July 1, 1945,[4] Regulation No. 3, as subsequently amended and revised, was taken over by respondent (Amendment No. 6, Revised Regulation No. 3, 10 F. R. 11155). This regulation continued in effect until June 30, 1946,[5] when, as a result of the termination of the Emergency Price Control Act of 1942, price control lapsed and the authority to continue subsidy programs, including that set up by Regulation No. 3, expired (12 F. R. 66).

On July 25, 1946, the Price Control Extension Act of 1946 became law (60 Stat. 664). Pursuant to its authority under that Act, the Price Decontrol Board, on August 22, 1946, authorized

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[3] The Defense Supplies Corporation, a corporation organized under Section 5d of the Reconstruction Finance Corporation Act (15 U. S. C. 606b) and therefore qualified to pay subsidies under Section 2 (e) of the Emergency Price Control Act of 1942 (50 U. S. C. App. 902 (e)) on meat products defined by the President to be strategic and critical materials, was directed on May 7, 1943, to put a subsidy program in operation so as to "reimburse [meat packers and wholesalers] for the reduction in ceiling prices." (For text of this May 7, 1943, directive, see R. 689.)

[4] The Act of June 30, 1945 (59 Stat. 310), which took effect July 1, 1945, transferred to respondent the authority, functions, and property of the Defense Supplies Corporation.

[5] Section 1 of the Act of June 30, 1945 (59 Stat. 306), continued the Emergency Price Control Act of 1942 into effect until June 30, 1946.

the reimposition of maximum selling prices on meat products and the reestablishment of the subsidy program (11 F. R. 9138). Accordingly, the Price Administrator issued regulations making the various meat price controls effective September 1, 1946 (11 F. R. 9373) and the Director of Economic Stabilization directed respondent to reestablish the subsidy program (11 F. R. 9375). Respondent then issued its Regulation No. 10, providing that subsidy payments would be made, effective September 1, 1946, in accordance with all the terms and conditions of former Regulation No. 3 (R. 3, 6; *infra,* p. 24).

The restored meat price controls were in effect only through October 14, 1946 (Amendment No. 64, Supplementary Order No. 132, 11 F. R. 12093), when Regulation No. 10 also expired (12 F. R. 66). Immediately following decontrol, meat prices skyrocketed to levels far above the former maximum, permissible selling prices (R. 690–691). Thus, by October 19, 1946, four days after decontrol, the former, controlled price of 25¢ for beef jumped to 55¢ (R. 690). In the same period, veal, which had sold for approximately 21¢ under control, rose to 46¢, and the cost of bacon shot up from 29¢ to 52¢ (R. 690, 691). These increases represented a price increase of about 100%, whereas, as has been noted, the subsidy program had been instituted to compensate meat producers for a 10% price reduction, *supra,* p. 3; R. 687, 689.

On March 31, 1947, respondent issued its Announcement No. 1 declaring in effect that no subsidies were to be paid with respect to meat held in inventory at the close of business on October 14, 1946, since such meat was sold at the greatly increased and uncontrolled prices[6] (R. 4, 32; *infra,* pp. 24–26). To implement this Announcement, petitioner, on April 29, 1947, was requested to report its meat inventory on hand at the end of October 14 (R. 34, 45).

Despite the provisions of the Announcement, petitioner, ignoring the request for its terminal inventory report, "repeatedly demanded the payment" by respondent of subsidies for its October 14, 1946, inventory (R. 3). Upon respondent's refusal to comply with these demands, petitioner filed its complaint in the district court, alleging it had filed its claims "pursuant to and in conformity with Regulation No. 10," (R. 3), but that payment had been refused by respondent because of the provisions of Announcement No. 1 issued under Regulation No. 10 (R. 5, 32). Petitioner prayed for a declaratory judgment invalidating Announcement No. 1 and respondent's denial of its subsidy claims thereunder, asserting that the Announcement and the denial conflicted with the "terms or provisions of the

[6] The Announcement also directed the "recapture" of those subsidies allocable to such inventories and which had already been paid to large slaughterers (R. 32–33).

Emergency Price Control Act of 1942" and were "otherwise unlawful, capricious, arbitrary, null, void and of no effect" (R. 5). Petitioner further requested that an injunction issue to restrain respondent from enforcing Announcement No. 1, and that it be awarded damages against the respondent for the sum of $221,861.51, the subsidies allegedly owing to it (R. 5). Jurisdiction of the district court was invoked under Section 2 (m) of the Emergency Price Control Act of 1942, *infra*, pp. 22–23 (R. 2).

Respondent's answer, admitting its refusal to pay, again denied the validity of the claim (R. 44–45). In a separate defense, the answer alleged that the district court lacked jurisdiction because Section 204 (d) of the Emergency Price Control Act of 1942, *infra*, p. 23, vested exclusive jurisdiction of such suits in the Emergency Court of Appeals, and because Section 2 (m) of that Act did not apply so as to confer jurisdiction on the district court.[7]

The district court, holding that it had jurisdiction and that Announcement No. 1 with its implementing letter were invalid, ruled that petitioner "is entitled to a declaratory judgment finding that R. F. C. is indebted to it in the sum of $221,861.51, the amount claimed in the com-

[7] The answer also set forth two counterclaims which are not in issue here (R. 46, 59, 73, 230).

plaint" (R. 73).[8] Soon thereafter, the Emergency Court of Appeals, in a case involving another meat producer, ruled that Announcement No. 1 was valid. *Wm. Schluderberg-T. J. Kurdle Co.* v. *Reconstruction Finance Corporation,* 169 F. 2d 419. After this Court denied certiorari in that case (335 U. S. 846), the district court filed another opinion, in which it adhered to its original views and refused to follow the *Schluderberg* decision (R. 719–728). The court then entered judgment holding Announcement No. 1 invalid and awarding petitioner $221,861.51 in damages with interest at 5% from the date of issuance of the Announcement (R. 736).

On appeal, the court below "reversed with directions to dismiss the cause for want of jurisdiction" (R. 759), holding that Section 2 (m) vested no jurisdiction over the action in the district court, and that Section 204 (d) vested exclusive jurisdiction thereover in the Emergency

[8] It should be noted that this ruling preceded any hearing on the complaint, and was handed down *before* any proof or evidence of any sort had been introduced by petitioner. Petitioner, realizing the need of introducing some "factual material supporting Judge Sullivan's opinion" (R. 106) and that it "must go to the Circuit Court of Appeals with some evidence" (R. 106), succeeded in getting the case referred to a Master for the purpose of enabling it to introduce evidence (R. 92). While this highly questionable procedure was assigned as error by respondent in appealing from the district court's decision, it was, of course, unnecessary for the court below to consider this aspect of the case, in view of its holding as to the district court's lack of jurisdiction.

Court of Appeals (R. 752–759). Chief Judge Major dissented (R. 759).

ARGUMENT

The decision of the court below, holding that the district court had no jurisdiction, is, we submit, clearly correct and does not require review by this Court.

1. Section 204 (d) of the Emergency Price Control Act of 1942 (50 U. S. C. App. 924 (d), see *infra*, p. 23) vests in the Emergency Court of Appeals, and in this Court, upon review of the Emergency Court's judgments, "exclusive jurisdiction to determine the validity of any regulation or order issued under section 2 * * * and of any provision of any such regulation, order * * *," and provides that no other court shall have jurisdiction or power "to consider the validity of any such regulation, order * * *." The compelling considerations which motivated that exclusive grant of jurisdiction have been reviewed by this Court, and the constitutionality of the grant affirmed. *Lockerty* v. *Phillips*, 319 U. S. 182; *Yakus* v. *United States*, 321 U. S. 414; *Bowles* v. *Willingham*, 321 U. S. 503.

Since Announcement No. 1 was issued under Regulation No. 10, which in turn was issued under Section 2 (e) of the Price Control Act,[9]

[9] Petitioner does not even contend that the Announcement and Regulation were not issued under Section 2 (e) of the Price Control Act. Nor could any such contention have

consideration by the district courts of the validity of the provisions of the Announcement would seem barred by the express terms of Section 204 (d). Petitioner endeavors to avoid the jurisdictional limitation of Section 204 (d) by characterizing respondent's action in issuing Announcement No. 1 as something other than the issuance of an order or regulation (Pet. 26). But there can be little doubt that the general nature of the Announcement, its object, and widespread impact require it to be considered a regulation of general applicability governing an entire segment of the meat industry. *Wm. Schluderberg-T. J. Kurdle Co.* v. *Reconstruction Finance Corporation,* 169 F. 2d 419, 420 (E. C. A.), certiorari denied, 335 U. S. 846. Indeed, even though petitioner denies that the Announcement was a regulation, it admits the general applicability of the Announcement by emphasizing that the district court's invalidation of Announcement No. 1 "relates not only to this petitioner, but to each of these 4,000 commercial slaughterers which had meat inventory on hand at the termination of

merit. *Wm. Schluderberg-T. J. Kurdle Co.* v. *Reconstruction Finance Corporation*, 169 F. 2d 419 (E. C. A.); *Earl C. Gibbs, Inc.* v. *Defense Supplies Corp.*, 155 F. 2d 525, 526–528 (E. C. A.), certiorari denied, 329 U. S. 737; *Illinois Packing Co.* v. *Snyder*, 151 F. 2d 337, 338, 339 (E. C. A.); *Illinois Packing Co.* v. *Bowles*, 147 F. 2d 554, 556–558 (E. C. A.); *Illinois Packing Co.* v. *Defense Supplies Corp.*, 57 F. Supp. 8, 10–11 (N. D. Ill.), affirmed *sub nom. Illinois Packing Co.* v. *Reconstruction Finance Corp.*, 156 F. 2d 875 (C. A. 7).

the livestock slaughter subsidy program effective October 15, 1946" (Pet. 18). The conceded general applicability of the Announcement is a recognition, we submit, of its regulatory nature.

In any event, it is thoroughly settled that Section 204 (d) conferred on the Emergency Court of Appeals exclusive original jurisdiction not only with respect to the validity of regulations of general applicability but also with respect to the validity of orders directed at particular individuals. *Porter* v. *Eastern Sugar Associates,* 159 F. 2d 299, 301–302 (C. A. 4), and cases there cited; *Woods* v. *Bobbitt,* 165 F. 2d 673 (C. A. 4); *Coffey* v. *Smith,* 159 F. 2d 277 (C. A. 7); *Fleming* v. *Phoenix Chair Co.,* 168 F. 2d 3 (C. A. 7); *Noble* v. *Ricker,* 165 F. 2d 983 (C. A. 10). Thus, even if Announcement No. 1 should not be deemed a regulation, Section 204 (d)'s grant of exclusive jurisdiction nevertheless prevents the district court from taking cognizance of this action because there is no question that the denial by respondent of the petitioner's subsidy claims constitutes the issuance of an individual order under Section 2 (e). It has consistently been held that Reconstruction Finance Corporation's administrative action "relative to the payment or nonpayment of a subsidy" is "an order issued under Section 2" over which the Emergency Court of Appeals has exclusive jurisdiction. *Tambasco* v. *Reconstruction Finance Corporation,* 178 F.

2d 283, 285 (C. A. 2); *Duncan Coffee Co.* v. *Reconstruction Finance Corporation,* 178, F. 2d 926, 928 (E. C. A.); *Merchants Packing Company* v. *Reconstruction Finance Corporation,* 176 F. 2d 908 (E. C. A.); *Wm. Schluderberg-T. J. Kurdle Co.* v. *Reconstruction Finance Corporation,* 169 F. 2d 419, 420 (E. C. A.), certiorari denied, 335 U. S. 846; *Belle City Packing Company* v. *Reconstruction Finance Corporation,* 169 F. 2d 413, 414 (E. C. A.); *Armour & Co.* v. *Reconstruction Finance Corporation,* 162 F. 2d 918, 923 (E. C. A.); *Greenhouse Bros. & Finkelstein, Inc.* v. *Reconstruction Finance Corporation,* 159 F. 2d 712 (E. C. A.), certiorari denied, 331 U. S. 812; *Illinois Packing Co.* v. *Snyder,* 151 F. 2d 337 (E. C. A.); *Illinois Packing Co.* v. *Bowles,* 147 F. 2d 554 (E. C. A.). Therefore, since respondent's action in refusing to pay subsidies to petitioner here was at least an order, within the meaning of that word as used in Section 204 (d), "it follows inevitably", as pointed out by the court below, that petitioner's suit to set aside this administrative action as unlawful is cognizable only in the Emergency Court of Appeals (R. 758).

2. Petitioner must, therefore, depend solely on Section 2 (m) of the Emergency Price Control Act of 1942, *infra,* pp. 22–23, to sustain the jurisdiction of the district court. Such reliance is, however, misplaced. That subsection of the Price Control Act, added by the Act of June 30, 1944

(58 Stat. 632), prohibits any agency, department, officer, or employee of the Government from imposing unlawful conditions or penalties in the payment of subsidies relating to the production or sale of agricultural commodities and provides that persons aggrieved by such action may petition the district courts for relief. An examination of the letter of the statute and a consideration of its history in Congress disclose that it was not designed to and does not subject subsidy regulations or orders, such as those here involved, to the review of the federal district courts.

a. According to its express terms, Section 2 (m), *infra*, pp. 22–23, comes into play only in cases involving the payment of sums relating to "the production or sale of agricultural commodities." Involved here, however, are subsidy claims on the production and sale of beef, veal, pork and other processed meats (R. 687–689). These meat products are derived from, but they are not themselves agricultural commodities. *Atlantic Meat Co.* v. *Reconstruction Finance Corp.*, 166 F. 2d 51 (C. A. 1); *Superior Packing Co.* v. *Clark*, 164 F. 2d 343, 348–349 (E. C. A.); *Bowles* v. *Superior Packing Co.*, 63 F. Supp. 12, 16–17 (D. Minn.), affirmed, 156 F. 2d 193 (C. A. 8), certiorari denied, 329 U. S. 788; *United States* v. *Charney*, 50 F. Supp. 581 (D. Mass.); see, also, *Dowling Bros. Distilling Co.* v. *United States*, 153 F. 2d 353, 358 (C. A. 6), certiorari denied

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sub nom. Gould v. *United States,* 328 U. S. 848; *Taub* v. *Bowles,* 149 F. 2d 817, 823 (E. C. A.), certiorari denied, 326 U. S. 732; *Bowles* v. *American Brewery,* 146 F. 2d 842, 845 (C. A. 4). The distinction between "agricultural commodities," that is, commodities produced on a farm and sold by a farmer in their raw, natural or unprocessed state (the live steer or hog), and commodities produced from them (beef cuts, pork products, etc.) was drawn when the Price Control Act was first enacted. See, *e. g.,* Sections 2 (e), 2 (i), 3 (c) (50 U. S. C. App. 902 (e), 902 (i), 903 (c)); see, also Section 3 of the Stabilization Act of 1942, 50 U. S. C. App. 963. That distinction was carried over into Section 2 (m) when it was added to the Act. As the Court of Appeals for the First Circuit notes in *Atlantic Meat Co.* v. *Reconstruction Finance Corporation,* 166 F. 2d 51, 55, the legislative history makes it plain that, in enacting Section 2 (m), Congress had in mind the farmer rather than the processor of farm products. See Sen. Rep. No. 922, 78th Cong., 2d sess., p. 9; Hearings before Senate Committee on Banking and Currency on S. 1764, 78th Cong., 2d sess., pp. 464–475; 90 Cong. Rec. 5291–5292.

Nor can petitioner escape the requirements of Section 2 (m) by labelling the subsidy payments here involved as payments on livestock (admittedly an agricultural commodity) rather than on meat products (Pet. 22–25). The cases hold

repeatedly that, even though the formula for computing these subsidy payments was couched in terms of livestock slaughter, for industry convenience, the subsidies are actually meat product subsidies and not subsidies on cattle or livestock. *Tambasco* v. *Reconstruction Finance Corporation,* 178 F. 2d 283, 285 (C. A. 2); *Superior Packing Co.* v. *Clark,* 164 F. 2d 343 (E. C. A.); *Wm. Schluderberg-T. J. Kurdle Co.* v. *Reconstruction Finance Corporation,* 169 F. 2d 419 (E. C. A.), certiorari denied, 335 U. S. 846. In fact, the express language of the directives authorizing inauguration of this subsidy program so as to compensate meat producers for the 10% reduction in the maximum prices of meat products ordered in June 1943, shows conclusively that the subsidy was on meat products rather than on cattle (R. 687–689). And the need for such subsidies to relieve the "squeeze" between high livestock prices and low meat ceilings, in which the meat producers (rather than livestock producers) were thus caught, has been consistently recognized by the courts. *San Antonio Packing Co.* v. *Reconstruction Finance Corporation,* 182 F. 2d 614 (E. C. A.); *Wm Schluderberg-T. J. Kurdle Co.* v. *Reconstruction Finance Corporation,* 169 F. 2d 419 (E. C. A.), certiorari denied, 335 U. S. 846; *Armour & Co.* v. *Reconstruction Finance Corporation,* 162 F. 2d 918, 922 (E. C. A.); *Ben H. Rosenthal & Co., Inc.* v. *Porter,* 158 F. 2d 171, 172

(E. C. A.), certiorari dismissed on petitioner's motion, 330 U. S. 802; *Armour & Co.* v. *Bowles,* 148 F. 2d 529, 532, 534 (E. C. A.), certiorari denied, 325 U. S. 871; *Earl C. Gibbs, Inc.* v. *Defense Supplies Corp.,* 155 F. 2d 525, 526 (E. C. A.), certiorari denied, 329 U. S. 737; *Illinois Packing Co.* v. *Snyder,* 151 F. 2d 337, 339 (E. C. A.).

b. Petitioner's reliance on Section 2 (m) is misplaced for an additional reason. Even if the subsidy payments here involved were actually subsidies on livestock, the district court still would not have jurisdiction. For, even with respect to agricultural commodities, Section 2 (m) did not repeal Section 204 (d) so as to deprive the Emergency Court of Appeals of exclusive jurisdiction to consider the validity of subsidy orders or regulations issued pursuant to the Price Control Act. That is the holding, not only of the court below, but also of every other court which has ruled on the question. *Tambasco* v. *Reconstruction Finance Corporation,* 178 F. 2d 283 (C. A. 2); *Wm. Schluderberg-T. J. Kurdle Co.* v. *Reconstruction Finance Corporation,* 169 F. 2d 419 (E. C. A.), certiorari denied, 335 U. S. 846; *Samett* v. *Reconstruction Finance Corporation,* 165 F. 2d 605 (C. A. 10), certiorari denied, 334 U. S. 812; *Atlantic Meat Co.* v. *Reconstruction Finance Corp.,* 166 F. 2d 51, 56–57 (C. A. 1); *Illinois Packing Co.* v. *Defense Supplies Corp.,* 57 F. Supp. 8 (N. D. Ill.), affirmed *sub*

nom. Illinois Packing Co. v. *Reconstruction Finance Corp.*, 156 F. 2d 875 (C. A. 7).[10] And it is confirmed by the history of the legislation. The Senate committee which recommended the amendment incorporating Section 2 (m) into this Act, specifically stated that the exclusive jurisdiction of the Emergency Court of Appeals in cases concerning the validity of regulations was left unchanged (see Sen. Rep. No. 922, 78th Cong., 2d sess., p. 58). In addition, statements made both during the hearings before the committee and when the bill was discussed on the floor of the Senate demonstrate that the

[10] Petitioner has listed nine cases, pending in the district courts, as involving similar or related questions under Section 2 (m) (Pet. 19, notes 8 and 9). Of these, all but the *Riverview Packing* case (Pet. 20) remain undecided. The district court in that case, on July 28, 1950, agreed with the determination of District Judge Sullivan in the instant case and accepted jurisdiction under 2 (m). However, even though the *Riverview* opinion was, as petitioner points out, "handed down after the decision," (Pet. 20) of the court of appeals in the instant case, it is apparent that the district court in the *Riverview* case relied on Judge Sullivan's decision without regard to the fact that that decision had been reversed by the court below on June 21, 1950. Moreover, there is nothing to indicate, should the instant petition be denied, that the Court of Appeals for the Third Circuit, in hearing respondent's appeal of the *Riverview* case, would decline to follow the well-reasoned opinion below, as well as those of the Emergency Court of Appeals and the Courts of Appeals for the First, Second, Seventh and Tenth Circuits—all of which, as shown *supra*, pp 16–17, have held that Section 2 (m) did not vest jurisdiction of such suits in the district courts. Similarly, those consistent holdings should also, we submit, be dispositive of the eight undecided cases.

new subsection was not designed to make such a far-reaching change. See Hearings before Committee on Banking and Currency on S. 1764, 78th Cong., 2d sess., pp. 464–471; 90 Cong. Rec. 5291–5292. Moreover, when, in 1945, a year after enactment of Section 2 (m), Congress legislated to relieve meat producers from inequitable liabilities to repay extra subsidy payments for which they had not been eligible, it clearly stated that the Emergency Court of Appeals still remained the proper forum for the review of meat subsidy claims.[11] To hold that Section 2 (m) had abol-

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[11] The statutory provision referred to is Section 2 of the Act of June 23, 1945, c. 193, 59 Stat. 260, 261, which reads as follows:

"Any slaughterer who heretofore or hereafter shall have received extra compensation payments under Livestock Slaughter Payments Regulation Numbered 3 of Defense Supplies Corporation (adopted pursuant to directives of the Director of Economic Stabilization) when such slaughterer was not in a class eligible for such extra compensation payments, shall be relieved, in whole or in part, of obligation to repay the amount thereof and shall be entitled to receive, in whole or in part, the amount of such extra compensation payments repaid by such slaughterer to, or withheld by Defense Supplies Corporation on account of such extra compensation payments, to the extent that it is determined by the Director of Economic Stabilization, or any agency of the Government authorized by him, that it would be inequitable for Defense Supplies Corporation to require repayment by such slaughterer or to retain the amounts so repaid or withheld, provided such Director or agency also determines that such slaughterer believed reasonably and in good faith that he was eligible to receive such extra compensation payments: *Pro-*

ished the exclusiveness of the Emergency Court's jurisdiction would therefore not only imply in that section a repeal, in part, of Section 204 (d),[12] but would fly in the face of the specific congressional directive to the contrary in 1945.

3. Petitioner also raises the question as to whether respondent's refusal under the Announcement to pay meat subsidies on inventory on hand when meat prices were decontrolled on October 15, 1946, was authorized by the Price Control Act. Since the court below ordered the dismissal of the action because of lack of jurisdiction, it obviously did not reach the question of validity of the Announcement. It seems sufficient therefore to point out that the Emergency Court of Appeals, the only court having original jurisdiction to determine the validity of the Announcement, has already held the Announcement valid and ruled that subsidies may not be paid on meat sold at decontrolled prices. *Wm. Schluderberg-T. J. Kurdle Co.* v. *Reconstruction Finance Corpora-*

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vided, That any determination by such Director or agency under this section shall be reviewable by the Emergency Court of Appeals under such rules as such court may prescribe."

[12] Such repeal has, of course, been traditionally frowned upon by this Court. *Georgia* v. *Pennsylvania R. Co.*, 324 U. S. 439, 456–457; *United States* v. *Madigan*, 300 U. S. 500, 506.

tion, 169 F. 2d 419 (E. C. A.), certiorari denied, 335 U. S. 846.[13]

CONCLUSION

The decision below is correct and there exists no conflict. It is respectfully submitted therefore that the petition for a writ of certiorari should be denied.

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[13] Our brief in opposition to the petition for certiorari in that case (No. 248, Oct. T., 1948) shows the soundness of the court's decision and also shows that Announcement No. 1 not only conformed to price control statutes but was actually required by the Price Control Extension Act of 1946 (60 Stat. 664). Section 6 (a) (4) of that Act (60 Stat. 671) expressly prohibited subsidy operations for any commodity for any period after July 25, 1946 "during which maximum prices on such commodity are not in effect," and thus constituted a congressional reassertion of the fundamental basis of the meat subsidy and the other subsidy programs, *i. e.*, subsidy payments would not be made where prices had been decontrolled.

APPENDIX

1. The pertinent provisions of the Emergency Price Control Act of 1942, as amended (56 Stat. 23, 765; 58 Stat. 632; 59 Stat. 306; 60 Stat. 664; 50 U. S. C. App. 901 *et seq.*) provide as follows:

> Sec. 2 (e); 50 U. S. C. App. 902 (e):
>
> Whenever the Administrator determines that the maximum necessary production of any commodity is not being obtained or may not be obtained during the ensuing year, he may, on behalf of the United States, without regard to the provisions of law requiring competitive bidding, buy or sell at public or private sale, or store or use, such commodity in such quantities and in such manner and upon such terms and conditions as he determines to be necessary to obtain the maximum necessary production thereof or otherwise to supply the demand therefor, or make subsidy payments to domestic producers of such commodity in such amounts and in such manner and upon such terms and conditions as he determines to be necessary to obtain the maximum necessary production thereof: *Provided,* That in the case of any commodity which has heretofore or may hereafter be defined as a strategic or critical material by the President pursuant to section 5d of the Reconstruction Finance Corporation Act, as amended, such determinations shall be made by the Federal Loan Administrator with the approval of the President, and, notwithstanding any other provision

of this Act or of any existing law, such commodity may be bought or sold, or stored or used, and such subsidy payments to domestic producers thereof may be paid, only by corporations created or organized pursuant to such section 5d * * *.

Sec. 2 (m); 50 U. S. C. App. 902 (m):

No agency, department, officer, or employee of the Government, in the payment of sums authorized by this or other Acts of Congress relating to the production or sale of agricultural commodities, or in contracts for the purchase of any such commodities by the Government or any department or agency thereof, or in any allocation of materials or facilities, or in fixing quotas for the production or sale of any such commodities, shall impose any conditions or penalties not authorized by the provisions of the Act or Acts, or lawful regulations issued thereunder, under which such sums are authorized, such contracts are made, materials and facilities allocated, or quotas for the production or sale of any such commodities are imposed. Any person aggrieved by any action of any agency, department, officer, or employee of the Government contrary to the provisions hereof, or by the failure to act of any such agency, department, officer, or employee, may petition the district court of the district in which he resides or has his place of business for an order or a declaratory judgment to determine whether any such action or failure to act is in conformity with the provisions hereof and otherwise lawful; and the court shall have jurisdiction to grant appropriate relief. The provisions of the Judicial Code as to monetary amount involved necessary to give juris-

diction to a district court shall not be applicable in any such case.

Sec. 204 (d); 50 U. S. C. App. 924 (d):

Within thirty days after entry of a judgment or order, interlocutory or final, by the Emergency Court of Appeals, a petition for a writ of certiorari may be filed in the Supreme Court of the United States, and thereupon the judgment or order shall be subject to review by the Supreme Court in the same manner as a judgment of a circuit court of appeals as provided in section 240 of the Judicial Code, as amended (U. S. C., 1934 edition, Title 28, sec. 347). The Supreme Court shall advance on the docket and expedite the disposition of all causes filed therein pursuant to this subsection. The Emergency Court of Appeals, and the Supreme Court upon review of judgments and orders of the Emergency Court of Appeals, shall have exclusive jurisdiction to determine the validity of any regulation or order issued under section 2, of any price schedule effective in accordance with the provisions of section 206, and of any provision of any such regulation, order, or price schedule. Except as provided in this section, no court, Federal, State, or Territorial, shall have jurisdiction or power to consider the validity of any such regulation, order, or price schedule, or to stay, restrain, enjoin, or set aside, in whole or in part, any provision of this Act authorizing the issuance of such regulations or orders, or making effective any such price schedule, or any provision of any such regulation, order, or price schedule or to restrain or enjoin the enforcement of any such provision.

2. Regulation No. 10, Reconstruction Finance Corporation, provides:

> SECTION 7010.1. Reconstruction Finance Corporation shall make payments to eligible slaughterers on cattle, calves, hogs, and pigs slaughtered on and after September 1, 1946, in accordance with all the terms and conditions of Livestock Slaughter Payments, Revised Regulation No. 3 of Reconstruction Finance Corporation, as amended by Amendments No. 3, 4, 6, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17 and 18.
>
> SECTION 7010.2 Revised Regulation No. 3 of Reconstruction Finance Corporation and Amendments No. 3, 4, 6, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17 and 18 thereto are made a part of this regulation.
>
> SECTION 7010.3. This regulation shall terminate automatically, without regard to the ten day notice provision of Section 7003.12 of Revised Regulation No. 3, on the failure of any condition required by law as a prerequisite to validity of a subsidy on livestock or meat.
>
> This regulation shall become effective September 1, 1946. Issued this 28th day of August, 1946.
>
> STUART K. BARNES,
> *Executive Director,*
> *Office of Defense Supplies.*

3. Announcement No. 1 Under Regulation No. 10 of Reconstruction Finance Corporation provides:

> The volume of meat held in inventories by slaughterers at the close of business on October 14, 1946 (the date of termination of price controls on meat) was substantial, and such inventories were, of course, sold

thereafter at uncontrolled prices. The Office of Temporary Controls has determined that in view of the provisions of Section 6 (a) (4) of the Price Control Extension Act of 1946 and in order to avoid unjust enrichment of packers at the expense of the Government, subsidies allocable to these inventories should be recaptured. Operation of the plan is as follows:

I. De Minimis Cases. Because of the disportionate administrative burden in relation to the potential amounts involved, the Government will not attempt to recapture such subsidies in the case of slaughterers who furnish information to the RFC showing that they did not slaughter in excess of 500,000 pounds total live weight of cattle, calves and hogs combined during the period consisting of the May, June and September 1946 accounting periods. A form for the use of slaughterers falling in this class is attached hereto (RFC Form No. DSC 117). Such slaughterers must complete and file this form with RFC before April 30, 1947, unless they elect to have invalidated their September and October 1946 meat subsidy claims whether paid or unpaid. On receipt of the completed form showing slaughter of not more than a total of 500,000 pounds live weight of cattle, calves and hogs combined during the period consisting of the May, June and September 1946 accounting periods, RFC will pay any amounts otherwise due on the September and October 1946 claims.

II. Large Slaughterers. With respect to slaughterers who slaughtered in excess of 500,000 pounds during the May-June-September period the amount to be recaptured will be based on the amount of meat held in

inventory at the close of business October 14, 1946, unless they elect to settle instead by foregoing their total subsidies for September and October 1946. A form to be used by such slaughterers in reporting their inventories or for the purpose of making this election will be furnished as soon as copies are available. Until the form is available, no further September and October subsidy payments can be made to any slaughterer in this category unless he had no inventory of meat or meat products at the close of business October 14, 1946.

With respect to all slaughterers, large or small, who have already received the September-October subsidy, if their cases are not settled pursuant to the procedures provided herein, they will be referred to the Department of Justice.

Issued this 31st day of March, 1947.

STUART K. BARNES,
Executive Director,
Office of Defense Supplies.

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Supreme Court of the United States

OCTOBER TERM, A. D. 1950.

No. 316

SWIFT & COMPANY,

Petitioner,

vs.

RECONSTRUCTION FINANCE CORPORATION,

Respondent.

PETITIONER'S REPLY BRIEF IN SUPPORT OF ITS PETITION FOR WRIT OF CERTIORARI.

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